

A BILL

To amend the Communications Act of 1934 to provide the Federal Communications Commission with permanent authority to auction spectrum licenses and with new authority to charge fees for unauctioned spectrum licenses and construction permits

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

SECTION 1. PERMANENT EXTENSION OF AUCTION AUTHORITY – Section 309(j) of the Communications Act of 1934 is amended by repealing paragraph (11).

SECTION 2. AUTHORITY TO ESTABLISH SPECTRUM LICENSE USER FEES

– Section 309 of the Communications Act of 1934 is amended by adding at the end the following new subsection:

“(m) **USE OF SPECTRUM LICENSE USER FEES.** – For licenses or construction permits which are not granted through the use of competitive bidding as set forth in subsection (j) the Commission is authorized to establish, assess, and collect annual user fees on holders of spectrum licenses or construction permits, including their successors or assignees, in order to promote efficient and effective use of the electromagnetic spectrum.

“(1) **DEVELOPMENT OF FEE REGULATIONS.** –

“(A) The Commission shall, by regulation, establish a methodology for assessing annual user fees and a schedule for collection of such fees on classes of spectrum licenses or construction permits consistent with the public interest, convenience and necessity. The Commission may determine over time different classes of spectrum

licenses or construction permits upon which such fees may be assessed. In establishing the fee methodology the Commission may consider the following factors:

“(i) scope and type of permissible services and uses;

“(ii) amount of spectrum and licensed coverage area;

“(iii) shared versus exclusive use;

“(iv) level of demand for spectrum licenses or construction permits within a certain spectrum band or geographic area; and

“(v) other such factors that the Commission determines, in its discretion, are necessary to promote efficient and effective spectrum use.

“(B) Within 60 days of enactment of this Act, the Commission shall commence a rulemaking to develop the fee methodology and regulations. The Commission shall take all actions necessary so that it can collect fees from the first class or classes of spectrum license or construction permit holders no later than September 30, 2005.

“(C) The Commission, from time to time, may commence further rulemakings (separate from or in connection with other rulemakings or proceedings involving spectrum-based services, licenses, permits and uses) and modify the fee methodology or revise its rules required by paragraph (B) to add or modify classes of spectrum license or construction permit holders that must pay fees, to reflect appropriate increases or decreases in fees as a result of the addition, deletion, reclassification or other change in a spectrum-based service or use, including changes in the nature of a spectrum-based service or use as a consequence of

Commission rulemaking proceedings or changes in law. Any resulting changes in the classes of spectrum licenses, construction permits or fees shall take effect according to the dates established in the Commission's rulemaking proceeding or by law.

“(2) PENALTIES FOR LATE PAYMENT. – The Commission shall prescribe by regulation an additional charge which shall be assessed as a penalty for late payment of fees required by this subsection.

“(3) REVOCATION OF LICENSE OR PERMIT. – The Commission may revoke any spectrum license or construction permit for a licensee's or permittee's failure to pay in a timely manner any fee or penalty to the Commission under this subsection.

“(4) TREATMENT OF REVENUES. – All proceeds obtained pursuant to the regulations required by this subsection shall be deposited in the general fund of the Treasury.”

SECTION-BY-SECTION ANALYSIS

This legislative proposal implements the Auction Authority and Spectrum License User Fees proposals in the President's FY 2004 Budget. To promote more efficient and effective spectrum use, this proposal provides the Federal Communications Commission with permanent auction authority and with new authority to charge user fees for unauctioned spectrum licenses and construction permits. In a recent rulemaking, several Commissioners commented that fee authority would be a desirable spectrum management tool in certain circumstances. This proposal provides the Commission with that authority and directs the Commission to undertaking a rulemaking to implement it.

SECTION 1. PERMANENT EXTENSION OF AUCTION AUTHORITY

This section makes the Commission's authority to assign licenses via auction (competitive bidding) permanent by repealing subsection (11) of section 309(j) of the Communications Act of 1934. Section 309(j) establishes the Commission's auction authority and subsection (11) states that the entire section sunsets on September 30, 2007. Spectrum auctions have proven to be an efficient method for assigning licenses or permits for certain spectrum-based services. Making the Commission's auction authority permanent will allow for more certainty in the auction planning process in the coming years.

SECTION 2. AUTHORITY TO ESTABLISH SPECTRUM LICENSE USER FEES

Section 2 creates a new subsection (m) under Section 309 of the Communications Act of 1934, which provides the Commission authority to establish, assess and collect fees for spectrum licenses and construction permits that were not assigned by auction (competitive bidding) under subsection 309(j). Fee authority will assist the Commission in managing the spectrum efficiently in cases in which auctions are prohibited or may not be an appropriate assignment tool but in which it is important to ensure that license holders pay the opportunity costs of their spectrum use. Given the many and varied uses of spectrum, it is understood that fees may not be appropriate for every class of spectrum license or construction permit. Therefore, the Commission is expected to carry out a multi-stage rulemaking to determine the appropriateness of fees as a spectrum management tool for different classes of licenses or permits.

Paragraph (1)

Paragraph (1) of new subsection (m) governs the Commission's development of regulations to implement its fee authority.

Subparagraph (A) provides that the Commission shall conduct a rulemaking in order to establish a fee methodology and a fee collection schedule. The Commission is directed to develop a fee methodology consistent with the public interest, convenience and necessity requirement, which is found throughout the Communications Act. The Commission is expected to undertake a multi-stage rulemaking during which fees for different classes of spectrum licenses or construction permits may be developed and phased-in over time, consistent with spectrum management principles.

The proposal specifies that the Commission may take the following factors into account when developing a fee methodology:

- Scope and type of permissible services and uses;

- Amount of spectrum and licensed coverage area;
- Shared versus exclusive use;
- Level of demand for spectrum licenses or construction permits within a certain spectrum band or geographic area; and
- Other such factors that the Commission determines, in its discretion, are necessary to promote efficient and effective spectrum use.

The factors identified above are ones that may assist the Commission in determining which classes of spectrum licenses and construction permits should be subject to user fees and in developing a methodology that addresses the relative value of the spectrum to different classes of users. The Commission may consider other factors that may be raised during the rulemaking process. The Commission may also determine that certain classes of licenses or permits should be exempt from fees.

Subparagraph (B) directs the Commission to commence a rulemaking regarding fees as a spectrum management tool within 60 days of enactment of the Act. The Commission is also directed to take all actions necessary so that fees for the first class or classes of spectrum licenses or construction permits can be collected by September 30, 2005.

Subparagraph (C) clarifies that the Commission may modify the fee methodology or revise the rules implementing fees either through separate rulemakings or as part of rulemakings or proceedings involving spectrum-based services, licenses, permits, and uses. Such modifications or revisions may add or modify classes of spectrum license or construction permit holders that must pay fees, to reflect appropriate increases or decreases in fees as a result of the addition, deletion, reclassification or other change in a spectrum-based service or use, including changes in the nature of a spectrum-based service or use as a consequence of Commission rulemaking proceedings or changes in law. Such modification or revisions can take effect upon the date established in the Commission's rulemaking or in law.

Paragraph (2)

Paragraph (2) provides the Commission the authority to assess penalties for late payment of fees.

Paragraph (3)

Paragraph (3) provides the Commission the authority to revoke a license or permit if the license or construction permit holder has failed to pay the fee or penalty authorized under this section to the Commission.

Paragraph (4)

Paragraph (4) requires that all fee payments collected by the Commission under this section be deposited in the general fund of the Treasury.